LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 15 1963
JOHN F. DAVIS, CLERK

CASE

No. 878

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

Appeal from

The Court of Appeals of Logan County, Ohio

HAROLD C. FOREMAN and EDITH L. FOREMAN

Appellants

vs.

THE CITY OF BELLEFONTAINE

Appellee

REPLY BRIEF TO APPELLEE'S MOTION TO DISMISS APPEAL

HAROLD C. FOREMAN and EDITH L. FOREMAN
124 E. Spring Ave.
Bellefontaine, Ohio

Appellants, In Propria Persona

JAMES B. WEST
126½ South Main St.
Bellefontaine, Ohio

City Solicitor and Attorney for Appellee

CIVIL ACTION No. 878

IN THE SUPREME COURT OF THE UNITED STATES

HAROLD C. FOREMAN and EDITH L. FOREMAN
Husband and Wife
124 E. Spring Ave.
Bellefontaine, Ohio

Appellants

vs.

THE CITY OF BELLEFONTAINE
Bellefontaine, Ohio

Appellee

REPLY BRIEF TO APPELLEE'S MOTION TO DISMISS APPEAL

By virtue of, and in accordance with Rule 39 and Rule 40 of the Rules of the Supreme Court of the United States, appellants herein submit their Reply Brief opposing appellee's Motion to Dismiss Appeal, dated March 22, 1963.

I. Appellee contends "The validity of a state statute was not expressly passed on by the state court."

Appellee admits U.S.C. 28: 1257 provides: State Courts: Appeal: Certiorari: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: *(Underscoring supplied by appellants.)*

U.S.C. 28: 1257 (2) "By appeal, where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

QUESTIONS RAISED AND ARGUMENT

Did the Supreme Court of Ohio render a judgment and a final order in which a decision could have been had stating

in the record conclusions of fact separately from conclusions of law?

The record must speak for itself and shows the Federal and State Constitutional questions are contained in plaintiffs' petition, was put in issue by brief and oral argument in the Court of Common Pleas, Court of Appeals, Logan County, Ohio, and the Supreme Court of the State of Ohio, and the Supreme Court of Ohio entered the final order on the 20th day of December, A.D. 1962, wherein appellants' appeal involving the validity of Section 713.15, Ohio Revised Code, and Bellefontaine Zoning Ordinance No. 2493, Article 16, Section 16.02 was dismissed "for the reason that no debatable constitutional question exists herein."

In Appellee's Motion to Dismiss, second page, fourth paragraph, and under the topic, "Facts in support of Motion to Dismiss," Appellee admits the Supreme Court of Ohio rendered a decision in case No. 37687, which is the case herein involved, and goes on to state, "and shows clearly that the validity of a state statute was neither drawn into question nor expressly passed on by the Supreme Court of the State of Ohio," and again appellants say the record speaks for itself, and shows the State Statute and City Ordnance herein involved was drawn in question before the Court of Common Pleas, Court of Appeals, and the Supreme Court of the State of Ohio, and that the decision rendered on December 5, 1962, and entered on December 20, 1962, is in favor of the validity of the Statute and City Ordinance herein involved. Further, the denial and entry on December 19, 1962, of appellants' application for rehearing, based on Federal Constitutional grounds, is a decision in favor of the validity of the State Statute and City Ordinance herein involved.

We submit that if appellants in all cases were held responsible for the words and language, used or not used in inferior Courts in rendering opinions and decisions, no case could be appealed for review.

Appellants rely on Article fourteen, which is the Fourteenth Amendment to the Constitution of the United States and

U.S.C. 28: 1257 (2) as conferring jurisdiction upon the Supreme Court of the United States.

II. The appellee contends, "The judgment sought to be reviewed rests on an adequate non-Federal basis."

QUESTIONS RAISED AND ARGUMENT

Does the record, speaking for itself, support the contention submitted by the appellee?

The petition filed by the appellants herein contains the Federal Constitutional questions, as well as the State Constitutional questions, the Proceedings as of August 1, 1961, part of the record herein, shows the Judicial standards under which the trial Judge denied plaintiffs the right to trial by Jury, dismissed the witnesses present to testify on behalf of plaintiffs, ordered the case be submitted on a stipulation of facts. The trial Judge dictated to the Court Reporter only what he wanted in the Stipulations and ordered one of the plaintiffs, Harold C. Foreman, to return on August 2, 1961, to subscribe to the stipulations he wanted and would later render a decision on. (The Stipulations as to Fact prepared at the direction of the trial Judge is a part of the record in this Appeal.)

The decision by the trial Judge, the full text of which begins at page 23, in the Appendix of appellants' Statement in support of jurisdiction, shows the trial Judge was fully apprised of the fact the business property involved was built in the year 1927, and was expanded and improved as a business property until Zoning Ordinance No. 2493 restricted its use to residence purposes and completely destroyed its value and marketability, and further, that it is suitable for business purposes only and not suitable for residence purposes.

The authorities cited by the trial Judge in his decision are all related to vacant residential lots, zoned as such and the use and value remained undisturbed as a result of the Court decisions in each respective case.

Appellants respectfully submit that the record clearly shows their Constitutional rights have been invaded and have been denied due process of law, all of which has resulted in great financial loss, and the ownership of their business prop-

erty has become a barren right.

III. The Appellee contends, "The appeal does not present a substantial Federal question."

QUESTIONS RAISED AND ARGUMENT

Does the frivolous argument and untrue statements contained in the last paragraph of appellee's "Facts in support of Motion to Dismiss" change the color of the truth contained in appellants' Notice of Appeal to the Supreme Court of the United States, and Statement in support of Jurisdiction, wherein it appears only one (1) Statute of the State of Ohio whose validity is involved is State Law, Section 713.15, Ohio Revised Code, and The City of Bellefontaine Zoning Ordinance No. 2493, Article 16, Section 16.02, enacted pursuant to State Law 713.15, whose validity is involved, and the subsidiary questions comprised therein relating to the Judicial standards and conduct of the trial?

Appellants respectfully contend the untrue statements contained in the last paragraph are wilful on the part of James B. West, Esq., City Solicitor and a public officer, and is a deliberate attempt to mislead this Honorable Court and to subvert the administration of justice.

The record shows the City Solicitor is a member of the Bar of the Supreme Court of the United States; therefore, we the appellants herein, believe this Court will not allow unbridled distortion of the truth with impunity.

We respectfully quote an aged doctrine which we believe is appropriate in this case, "Impuris manibus nemo accedat curiam."

Respectfully submitted,
/s/ Harold C. Foreman
/s/ Edith L. Foreman
Appellants, In Propria Persona

Harold C. Foreman
Edith L. Foreman
124 E. Spring Ave.
Bellefontaine, Ohio